THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1584 of 2001.
(Old FAFO No. 999 of 1991)

New India Assurance Company, Branch Kamleshwar,
Srinagar, Garhwal, through Senior Divisional Manager,
Divisional Office, 9th Floor, Indira Bhawan, Civil Lines,
Allahabad.

…**Appellant.**

Vs.

1. Umer Singh S/O Bhup Singh Negi,
   Resident of village Nagrasu Pargana Nagrasu, Tehsil Rudraprayag, District Chamoli.
   (Claimant)
2. Buddhi Ballabh Joshi, S/O Govind Ram, owner Bus No. USY-3637. Resident of village Khatiyana, Tehsil Rudraprayag, District Chamoli.
3. Rajpal Singh S/O Sant Singh, Driver,
   Resident of village Khatiyana, Tahsil Rudraprayag,
   District Chamoli.
4. Prem Singh S/O Kamla Singh, Conductor,
   Resident of village Khatiyana, Tehsil Rudraprayag,
   District Chamoli.

…**Respondents.**

Sri R.B.Agrawal, learned counsel for the appellant.
None appeared for the respondents.
Date June 09, 2006
P.C.: Hon'ble B.S. Verma, J.

This present appeal under Section 110-D of the Old Motor Vehicles Act of 1939 ***(for short the Old Act)*** read with Section 173 of the Motor Vehicles Act 1988 ***(for short the new Act)*** is directed against the judgment and award dated 24-8-1991 passed by Sri M.Lal, the then Motor Accident Claims Tribunal Chamoli **(** ***for short the Tribunal*** **)** in Claim Petition No. 12 of 1990, Umer Singh Vs. New India Assurance Company and others, whereby a compensation of 15,000/- was awarded to the claimant along with interest @ 12% per annum as mentioned in the impugned order.

The relevant facts necessary for a just decision of the appeal are that the claimant filed claim petition under Section 110-A of the Motor Vehicles Act, 1939 for compensation of Rs. 25,000/- for the accidental injuries suffered by him in the vehicular

accident on 29-5-1989 involving the bus No. USY-3637, which was being driven rashly and negligently by its driver Rajpal Singh. O.P.No.4 Prem Singh was conductor in the said bus. The bus was duly insured with the appellant-New India Assurance Company. O.P.No.1-appellant filed its written statement and resisted the claim petition denying the allegations made therein. It has, however, admitted the accident and the ownership and insurance of the vehicle have also been admitted. The owner of the bus Buddhi Ballabh filed his separate written statement, denied the allegations of the claim petition. It was asserted that the accident was caused due to inevitable circumstances, beyond the control of the owner. The driver of the bus also filed written statement and contested the claim petition. O.P.No.4, conductor of the bus, in his written statement pleaded that he had been impleaded in the case unnecessarily.

On the pleadings of the parties, the learned Tribunal framed six issues in the case. Issue No. 1 to 3 were interconnected being on the point of negligence. Issue No.4 was framed on the adequacy of compensation claimed. Issue No.5 related to the liability of the Insurance Company and Issue no.6 related to relief.

The learned Tribunal recorded evidence led by the parties, perused the same and after hearing both the parties came to the conclusion that a criminal case was registered against the driver of the bus in question, on the basis of the F.I.R. and a case under Sections 279/304A IPC was initiated in the Court of Munsif Magistrate. After perusing the entire evidence both oral and documentary, it was held that the accident in question resulting in injuries to the claimant was caused due to the negligence on the part of the driver of the ill-fated bus and not on account of technical fault in the vehicle. On Issue Nos.4 and 5, the learned Tribunal on the admission of the appellant-insurance company that it was liable to pay Rs. 15,000/- per passenger held that the insurance company is liable to pay compensation of Rs. 15,000/- to the claimant.

Accordingly, the claim petition was decreed for compensation of Rs. 15,000/- along with interest @ 12% per annum payable by the Insurance Company as mentioned above.

The main ground to assail the impugned award is that the finding of the Tribunal directing the appellant to pay compensation in excess of its statutory liability of Rs. 15,000/- is not tenable. Quantum of compensation has also been questioned in the appeal.

I have heard learned counsel for the appellant and perused the material on record including the impugned judgment and award.

At the outset, it may be mentioned that the scope of challenging an award by the Insurance Company is limited as envisaged under Section 149 of the Act. Moreover, it is not open to the Insurance Company to challenge the findings on the point of negligence and quantum of compensation, unless the insurance company had obtained permission from the Tribunal under Section 170 of the Act which corresponds to Section 110-C (2-A) of the Old Act. Moreover, in the present case, the owner and driver of the vehicle had participated in the proceedings from the beginning to the end. There is no such finding of the Tribunal that the claim petition has been preferred in collusion with owner of the vehicle. The law provides that appeal by the insurer can be filed on limited ground and the grounds of challenge cannot be enlarged. I am fortified in my view by the Apex Court judgment in the case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456],*** wherein it was observed that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending***

vehicle." Therefore, the contention of the appellant questioning the quantum of award is not tenable in the eye of law.

It has been argued by the learned counsel for the appellant that the Insurance Company is not liable to pay the amount in excess of its statutory liability of Rs. 15,000/-. It is a lame stand taken by the appellant and is not acceptable in the facts and circumstances of the case. *Firstly*, the award of interest in the compensation cases under the Motor Vehicles Act is meant to put pressure on the person liable to make payment. *Secondly,* the record shows that the accident took place on 29-5-1991 and the claim petition was filed in the year1990. The Tribunal passed the impugned award on 24-8-1991. During the pendency of the proceedings, the appellant insurance company never showed its willingness to pay the amount so far as its statutory liability is concerned, i.e. Rs. 15,000/- per passenger, as admitted by the appellant in its written statement. In the circumstances of the case, the Tribunal was fully justified in fastening the liability on the appellant to pay interest along with the compensation of Rs. 15,000/-. There is no infirmity or illegality in the findings recorded by the learned Tribunal.

No other point was urged or argued before me in this appeal.

For the reasons aforesaid, the appeal lacks merit and is liable to be dismissed.

The appeal is hereby dismissed. The impugned judgment and award dated 24-8-1991 is upheld. Costs easy.

The amount in deposit, if any, in compliance of order dated 31-10-1991 of Allahabad High Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant.

(B.S.Verma, J.)

RCP